IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE POST CONFIRMATION TRUST	**:**	
FOR FLEMING COMPANIES, INC.	**:**	
Plaintiff,	**:**	
	:	**CIVIL ACTION NO. 06-CV-1118**
	:	
	:	
HAROLD FRIEDLAND	**:**	
Defendant.	**:**	

MEMORANDUM AND ORDER

Tucker, J. **November 21, 2006**

Presently before the Court are Plaintiff's Motion for Reconsideration (Doc. 13) of the Order granting Defendant's Motion for Judgment on the Pleadings September 26, 2006 (Doc. 12) and Defendant's Response (Doc. 14). For the reasons set forth below, this Court will deny Plaintiff's motion.

BACKGROUND

Defendant Harold Friedland ("Defendant") is the guarantor of specified debts owed by Renco Supermarket ("Renco") to Fleming Companies/Fleming Foods East, Inc. ("Fleming"). Plaintiff, the Post Confirmation Trust for Fleming Companies, Inc. ("PCT"), is the Chapter 11 bankruptcy trust for Fleming. On March 2, 2006, Plaintiff filed a complaint to recover Renco's default rental payments from Defendant, which it alleged were covered by Defendant's guaranty.

On November 16, 1994, Fleming signed a sublease agreement with Renco, which contained the rental fees for the property. (Sublease Agreement, Ex. A. to Pl.'s Resp. to Def.'s Mot. for J. 5.) On August 19, 1996, Fleming loaned Renco $400,000 with no interest to purchase inventory. (Promissory Note, Ex. A to Def.'s Mot. for J. 1; Pl.'s

Resp. to Def.'s Mot. for J. 5.) Renco then gave Fleming a non-interest bearing promissory note in which Renco agreed to pay the full amount of the loan by December 27, 1996. Id. On August 19, 1996, the same day the promissory note was executed, Friedland gave Fleming his personal guaranty for the $400,000 promissory note from Renco. (Guaranty, Ex. B to Def.'s Mot. for J. 1.) The Guaranty, which does not mention the Sublease Agreement, is directed to Fleming Companies, Inc., and the relevant portion states:

> You are hereby requested to extend credit to Renco Supermarket, L.P. (the "Borrower"), from time to time, and to induce you to extend such credit, in consideration thereof, and in consideration of the benefits to accrue to the undersigned therefrom, the undersigned, intending to be legally bound, hereby absolutely, unconditionally, jointly and severally *guarantees to you* the prompt payment and performance when due, and at all times thereafter, of *the Four Hundred Thousand Dollar ($400,000.00) Promissory Note dated August 19, 1996*, and all costs, attorney's fees and expenses which may be incurred by you by reason of the Borrower's default in the payment of such indebtedness or the default of the undersigned hereunder.
>
> This is an absolute and continuing guarantee of payment in any event and shall not terminate until you have been paid in full the total amount of the Indebtedness and the Borrower has performed all obligations now or hereafter owing to you.

(Guaranty, Ex. B to Def.'s Mot. for J. 1) (emphasis added). On December 24, 1996, Renco paid in full the $400,000 to Fleming Companies. (Ans. ¶ 16.) More than four years later in January 2001, Renco violated its Sublease Agreement with Fleming when it fell behind in rent payments, which now total $657,078.94 (Compl. ¶¶ 14-15.)

STANDARD OF REVIEW

The Third Circuit has held that the "purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco

Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985), cert. denied, 476 U.S. 1171 (1986). Therefore, a motion for reconsideration will be granted if the moving party can demonstrate one of the following: 1) an intervening change in the controlling law; 2) the availability of new evidence that was not available previously; or 3) the need to correct a clear error of law or fact to prevent manifest injustice. Max's Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (citing N. River Ins. Co. v. CIGNA Reins. Co., 52 F.3d 1194, 1218 (3d Cir. 1995)). However, motions for reconsideration should be granted sparingly "because courts have a strong interest in the finality of judgments." Douris v. Schweiker, 229 F. Supp. 2d 391, 408 (E.D. Pa. 2002) (quoting Cont'l Casualty Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995)).

DISCUSSION

Plaintiff moved for reconsideration pursuant to Local Rule 7.1(g) asserting that there has been a clear error of law, and therefore the motion for reconsideration should be granted to prevent manifest injustice. (Pl.'s Mot. for Recons. 2.) The Court disagrees and denies Plaintiff's motion for reconsideration.

The Supreme Court has held that a finding of clear error requires a "definite and firm conviction that a mistake has been committed." Easley v. Cromartie, 532 U.S. 234, 242 (2001) (citing United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948)). To show clear error or manifest injustice, the moving party "must base its motion on arguments that were previously raised but were overlooked by the Court." United States v. Jasin, 292 F. Supp. 2d 670, 676 (E.D. Pa. 2003). However, "parties are not free to relitigate issues that the Court has already decided." Id. (citing Smith v. City of Chester, 155 F.R.D. 95, 97 (E.D. Pa. 1994)). See also Glendon Energy Co. v. Borough of

Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993); Rottmund v. Cont'l Assurance Co., 813 F. Supp. 1104, 1107 (E.D. Pa. 1992). Accordingly, "any litigant considering bringing a motion to reconsider based upon . . . [clear error and manifest injustice] should evaluate whether what may seem to be a clear error of law is in fact simply a disagreement between the Court and the litigant." Reich v. Compton, 834 F. Supp. 753, 755 (E.D. Pa. 1993) (citing Dodge v. Susquehanna Univ., 796 F. Supp. 829, 830 (M.D. Pa. 1992)). See also Smith, 155 F.R.D. at 97.

Further, "a motion for reconsideration is not a proper vehicle to merely attempt to convince the court to rethink a decision it has already made." Colon v. Colonial Intermediate Unit 20, 443 F. Supp. 2d 659, 667 (M.D. Pa. 2006) (citing Glendon Energy , 836 F. Supp. at 1122). "Motions for reconsideration . . . should not be used to put forward additional arguments which the movant could have made but neglected to make before judgment." Jasin, 292 F. Supp. 2d at 676 (quoting Reich, 834 F. Supp. at 755).

In support of its motion, Plaintiff first argues that the Court improperly relied upon Mt. Holly State Bank v. Mt. Holly Washington Hotel, Inc., 532 A.2d 1125, 1128 (N.J. Super Ct. App. Div. 1987) because it had a different procedural posture, having been decided after a "bench trial where the Superior Court interpreted certain guarantees pursuant to rules of contract construction and in light of commercial reality…" (Pl.'s Mot. for Recons. 3.) Ironically, in Plaintiff's Response to Defendant's Motion for Judgment on the Pleadings, Plaintiff cites Mt. Holly when stating the current law in New Jersey on interpreting contracts of guaranty. (Pl.'s Resp. to Def.'s Mot. for J. 4.) Nonetheless, Plaintiff's argument in this instance only reveals a disagreement with the Court as to the application of a case, not a clear error of law. See Reich v. Compton, 834

F. Supp. at 755.

Second, the Plaintiff asserts that this Court overlooked the inference from the complaint that Renco had a prior rental obligation that was covered by the language in the Guaranty, "all obligations now or hereafter owing to you." (Pl.'s Mot. for Recons. 4.) However, the court did not overlook the Plaintiff's argument in this instance. Plaintiff is therefore attempting to relitigate the issue, which is not proper in a motion for reconsideration.

The Court specifically stated that New Jersey law does not hold a guarantor liable for anything beyond the strict terms of the guaranty. (Mem. & Op. 5.) The Guaranty does not contain any reference to Renco's prior rental obligation to Fleming. Id. The court stated that the only obligation referenced in the Guaranty was for $400,000. Id. If the parties had intended the Guaranty to cover more than the $400,000 Promissory Note, New Jersey law requires broad language to extend the guaranty beyond one stated transaction. See First Bank & Trust v. Siegel, 115 A.2d 152, 153 (N.J. Super Ct. Law Div. 1955).

Further, the language "all obligations now or hereafter owing to you" must be considered in context. The Guaranty states that: "This is an absolute and continuing guarantee of payment in any event and shall not terminate until you have been paid in full the total amount of the Indebtedness and the Borrower has performed all obligations now or hereafter owing to you." (Guaranty, Ex. B to Def.'s Mot. for J. 1.) By this language, the Defendant did not guarantee "all obligations," but only the total amount of indebtedness. That indebtedness was limited to the $400,000 Promissory Note, which is clearly stated in the previous paragraph in the Guaranty. (Mem. & Op. 5.) Defendant did

not execute any more guarantees for Renco, and therefore had no other indebtedness for which he was responsible.

Finally, Plaintiff alleges that the Court has foreclosed the opportunity to develop the factual record, which would show that the sublease was within the contemplation of the parties. (Pl.'s Mot. for Recons. 4.) However, this Court stated that this case does not involve an ambiguous guaranty. (Mem. & Op. 6.) The terms are clear that Defendant's only obligation to Fleming was the guaranty of Renco's $400,000 promissory note. Id. Without any ambiguity, there is no room to develop the factual record. Further, even if one were to find any ambiguity, New Jersey law requires that it be resolved in the guarantor's favor, which would result in the same conclusion. Center 48, 810 A.2d at 619.

CONCLUSION

For the foregoing reasons, this Court will deny Plaintiff's Motion for Reconsideration. An appropriate order follows.

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Plaintiff,	**:**	
	:	**CIVIL ACTION NO. 06-CV-1118**
v.	**:**	
	:	
HAROLD FRIEDLAND	**:**	
Defendant.		

ORDER

AND NOW, this _____ day of November, 2006, upon consideration of Plaintiff's Motion for Reconsideration (Doc. 13) and Defendant's Respnse (Doc. 14), **IT IS HEREBY ORDERED and DECREED** that Plaintiff's Motion is **DENIED**.

IT IS FURTHER ORDERED that the Clerk of the Court shall mark the above-captioned case as **CLOSED**.

BY THE COURT:

/S/ Petrese B. Tucker

Hon. Petrese B. Tucker, U.S.D.J.